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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/826,083

04/16/2004

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134.004

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01/18/2007

EXAMINER

WARDEN, JILL A

ART UNIT

PAPER NUMBER

1743

MAIL DATE

DELIVERY MODE

01/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/826,083	KARMALI, RASHIDA, A.	
	Examiner	Art Unit	
	Jill A. Warden	1743	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-15.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.


Jill A. Warden
SPE
Art Unit: 1743

Continuation of 11. does NOT place the application in condition for allowance because: applicant argues that the combination of references does not teach the coated capillary as recited in the claims. Examiner disagrees that the claimed combination does not teach the instantly claimed device. It does appear, as applicant has re-stated that Schramm teaches the invention except the coating on the capillary, the colorimetric reagents, a filter and the particular materials of construction for the tube. For the reagents, the filter and the materials of construction, examiner relies on Nason. Applicant agrees that these three elements are not considered the ultimately patentable feature of the claimed invention. Applicant does appear to argue that the particular filter of Nason is distinguished from the claimed filter. However, the filter claimed is recited only as a filter membrane in the proximal end. Although Nason teaches a more complex filter, it still provides the necessary membrane filter of the claims and examiner's reasoning as why such would have been provided within Schramm is reasonable. With respect to the coated capillary, examiner cites Liotta. Applicant indicates that there is no motivation to combine Liotta with Schramm and Nason. Examiner disagrees. Liotta teaches adding a chelating agent to the coating internal to a blood collection device. It would have been obvious to one of ordinary skill in the art to add a chelating agent to the interior of the blood collection device of Schramm, namely the inside of the capillary, in order to chelate calcium ions. Applicant argues that they do not use a capillary coated with a chelant. Examiner argues that a chelant is a stabilizer. Examiner would also argue that this chelant, EDTA, is also a well known preservative. Applicant has claimed a coating which can be many things. A broad reasonable interpretation of applicant's claim includes many possible coatings. With respect to what Liotta also teaches which are not in applicant's claims, this is not germane to the issue. Liotta is not the primary reference an is relied upon for the particular teaching outlined above and in the rejection. Applicant also argues that, graduated markings and color-coding, while known in the art, would provide a cost savings and be efficient to hospitals. However, cost savings and efficiency, while being a secondary consideration to overcome a prima facie case of obviousness, must be supported by a showing of facts, not just conclusions.

Continuation of 13. Other: The declaration filed under 37 CFR 1.132 has been considered, but is not persuasive. In order for the declaration to be probative, it must include objective evidence of non-obviousness. Argument by counsel does not take the place of objective evidence. While it is recognized that counsel is also one of skill in this art, the statements provided in the declaration are mostly argument of why the references do not teach the claimed invention. Affiant however does indicate one potential point which may have evidentiary value when supported. On page 3, paragraph j indicates a particular refinement of the coating of the capillary. If such evidence were submitted with a declaration, it may contribute to non-obviousness of the coating of the capillary, which counsel argues is not obvious in view of the teachings of the references.